

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

GENEVA YAZZIE,

Plaintiff,

vs.

No. 1:10-cv-00962-PJK-WDS

DEBRA MOYA, Principal of the Tobe Turpen Elementary School, in her individual and official capacities; RAYMOND R. ARSENAULT, Superintendent of GALLUP-McKINLEY COUNTY SCHOOLS, in his individual and official capacities; THE GALLUP-McKINLEY COUNTY SCHOOL DISTRICT; BRUCE TEMPEST (President of the Board), JOSEPH C. MENINI (Vice-President of the Board), CHEE SMITH JR. (Secretary of the Board), ANNIE DESCHENY, and GENEVIEVE JACKSON, in their individual and official capacities, members of THE GALLUP-McKINLEY COUNTY SCHOOL BOARD,

Defendants.

ORDER

THIS MATTER comes on for consideration of Defendants' Motion to Stay Discovery on the Basis of Qualified Immunity filed December 21, 2010. Doc. 13.

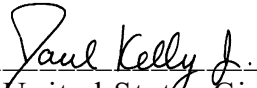
Upon consideration thereof, the motion is well-taken and should be granted.

When defendants raise qualified immunity as a defense in a motion to dismiss under Rule 12(b)(6), it is appropriate to stay discovery until that motion is resolved. Mitchell v. Forsyth, 472 U.S. 511, 526 (1985); Workman v. Jordan, 958 F.2d 332, 336 (10th Cir. 1992). Permitting discovery on claims against co-defendants not entitled to qualified immunity would likely subject any defendants who are entitled to immunity to the burdens of discovery. See Ascroft v. Iqbal, 129 S. Ct. 1937, 1953 (2009). This would constitute an end-run around immunity protection. See id.

Plaintiff is incorrect that resolution of the qualified immunity issue is irrelevant to an entity defendant which cannot assert a qualified immunity defense. If the motion to dismiss is granted on the first element of the qualified immunity analysis—whether the facts alleged by the plaintiff make out a constitutional violation, see Pearson v. Callahan, 555 U.S. 223, 129 S. Ct. 808, 815-16 (2009)—all § 1983 claims against all defendants will be dismissed. See Jiron v. City of Lakewood, 392 F.3d 410, 419 n. 8 (10th Cir. 2004). Therefore, discovery will be stayed pending resolution of Defendants’ motion to dismiss.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED and DECREED that Defendants’ Motion to Stay Discovery on the Basis of Qualified Immunity filed December 21, 2010 (Doc. 13) is granted and discovery is stayed.

DATED this 7th day of February 2011, at Santa Fe, New Mexico.



United States Circuit Judge
Sitting by Designation